

STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
Land Division
Honolulu, Hawaii 96813

July 22, 2016

Board of Land and Natural Resources
State of Hawaii
Honolulu, Hawaii

HAWAII

Subject: Forfeiture of General Lease No. S-3954, Miyashiro Poultry & Hog Farm, Inc., Lessee, Panaewa Farm Lots, 2nd Series, Waiakea, South Hilo, Hawaii, Tax Map Key: (3) 2-4-049: 030.

PURPOSE:

Forfeiture of General Lease No. S-3954, Miyashiro Poultry & Hog Farm, Inc., Lessee.

LEGAL REFERENCE:

Section 171-39, Hawaii Revised Statutes, as amended.

LOCATION:

Portion of Government lands of Panaewa Farm Lots situated at Waiakea, South Hilo, Hawaii identified by Tax Map Key: (3) 2-4-049: 030, as shown on the attached map labeled Exhibit A.

AREA:

10.097 acres, more or less.

TRUST LAND STATUS:

Section 5(b) lands of the Hawaii Admission Act

DHHL 30% entitlement lands pursuant to the Hawaii State Constitution: YES ____ NO
 X

CHARACTER OF USE:

Piggery purposes. Other permitted uses (Covenant #33 of GL S-3954): The Lessee may

raise chickens, have dairy or other kinds of farm animals or the development of a truck garden, provided that such pursuits, if not in conformance with the specified use, are strictly for Lessee's own use and do not constitute a commercial enterprise. Any other agriculture use must be approved by the Chairman.

TERM OF LEASE:

55 years, commencing on November 24, 1965 and expiring on November 23, 2020.

ANNUAL RENTAL:

\$2,630.00 per annum, due in quarterly payments.

REMARKS:

Pursuant to the authority granted the Chairperson by the Board of Land and Natural Resources at its meeting of January 11, 1980 and the breach provision contained in General Lease S-3954, Miyashiro Poultry & Hog Farm, Inc., Lessee, was served a Notice of Default by certified mail dated March 4, 2016 for:

___ Failure to keep lease rental payments current

X Post required Performance Bond

Required: \$5,260.00

Obtained: \$5,040.00

Difference Owed: \$220.00

___ Failure to post required fire insurance policy

___ Failure to post required liability insurance policy

X Other: Compliance with Lease Terms and Conditions

- After conducting an inspection of the subject property under General Lease No. S-3954 on January 29, 2016, staff have found the Lessee to be in violation for the following activities and/or conditions:

- Less than 2,000 square feet of the property is being utilized for the intended Character of Use, and furthermore, the piggery was operating in conditions that may be deemed unsanitary and disorderly...violation of Covenants 3, 5 and 11.

- Evidence that an outside business, Bob's Fencing, Inc., is operating its base yard on the property without authorization from the BLNR, as fencing supplies and a trailer with a Bob's Fencing sign on it were being stored. Also, a company vehicle occupied by two (2) employees from the company was leaving as staff first entered the premises. Junk used by the company was also observed piled up next to one of the buildings.....violation of Covenants 3, 11, 18, and 33.
- Evidence of an automobile junkyard was observed on the property, as a tow truck and a number of inoperable vehicles were noticed in one area...violation of Covenants 3, 18, and 33.
- Evidence of unauthorized truck storage was observed during the inspection, as a handful of large dump trucks were parked in one area....violation of Covenants 3, 18, and 33.
- A "show-bird" breeding operation was observed during inspection. Also, what looked like a cockfighting pit and cockfighting equipment & supplies were also observed on the property. The estimated quantity of "show-birds" on the property was not accurately observed, but the operation is assumed to be beyond the capacity of personal use and may be enough to consider it a commercial enterprise....violation of Covenants 3 and 33.
- During the site inspection, staff observed Lessee's failure to practice good husbandry with respect to the land. There was a large excavated hole in the ground about 100 ft. in diameter that was being used as a landfill. Also, with the same respect to practicing good husbandry, noxious weeds were observed covering a major portion of the property. Scattered piles of scrap metal and miscellaneous junk were also observed throughout the property. Also, there is still no evidence of a certified Conservation Plan that exists, which is a requirement imposed by the Chairperson at BLNR meeting of May 15, 1998, agenda item D-24....violation of Covenant 5.
- Three (3) residential dwellings were identified on the property during the inspection, contrary to the one (1) that is allowed based on the lease terms....violation of Covenant 27.
- During the inspection, staff noticed there was a failure to maintain the property in good order, condition and repair. Majority of the buildings were significantly rusted, compromising the structural integrity of the

structure. A couple of the buildings were missing roof panels.....violation of Covenant 28.

- For reference, the Covenants from GL S-3954 that apply to the violations above are defined as follows:
 - Covenant #3 - Character of Use: "That the use of the land and any improvements, if any, by the Lessee shall be limited to Piggery use only."
 - Covenant #5 – Practice of good husbandry: "That the Lessee will at all times during the term of this lease, practice good husbandry with respect to utilizing the land within the scope of the activity permitted herein and shall, at Lessee's own cost and expense, correct all failures and make good all defects of which notice shall be given in writing within sixty (60) days after receipt of such notices or any extension thereof. For the purpose of this lease, the term "practice of good husbandry" shall, without being restricted thereto, include the prevention or elimination of waste, suffering the land or any portion thereof to become unduly eroded without reasonable efforts being taken to correct the same, and suffering noxious weed coverage on the land or on any portion thereof."
 - Covenant #11 – Conformity with laws, rules, and regulations, etc.: "That the Lessee shall during the whole of the term of this lease maintain the land and all improvements in a sanitary and orderly condition satisfactory to the Lessor and in conformity with the Public Health Regulations of the Department of Health and with all applicable law, ordinances, rules and regulation and orders of the federal government, State and local governments."
 - Covenant #18 – Subletting: "That the Lessee shall not sublet the whole or any part of the land or improvements except with the approval of the Board; provided, that prior to giving such approval, the Board shall have the right to review and approve the rent to be charged to the sublessee. The Board shall have the further right to review and, if necessary, revise the rent to be charged the Lessee basing the new rent upon the rent to be charged the sublessee; provided, further, that the new rent may not be revised downward."
 - Covenant #27 – Building Requirement: "The Lessee shall construct on the land one (1) single family dwelling of new materials or masonry of not less than 950 square feet in floor area (exclusive of garage and open lanai) within two (2) years of the date of drawing and valued at not less than

SEVEN THOUSAND FIVE-HUNDRED AND NO/100 DOLLARS (\$7,500.00). No Quonset hut or similar type of residential dwelling will be permitted. Additional structures, such as barns, equipment and feed storage sheds, animal shelters, and other necessary enclosures may be constructed on the land. All buildings plans shall be approved by the Chairperson."

- Covenant #28 – Repairs to Improvements: "That the Lessee shall, at his own expense, keep and maintain all permitted improvements, if any, of every nature whatsoever now or hereafter situated, erected, constructed or installed on the land in good order, condition and repair, reasonable wear and tear excepted."
- Covenant #33 - Other Permitted Uses: "The Lessee may raise chickens, have dairy or other kinds of farm animals or the development of a truck garden, provided that such pursuits, if not in conformance with the specified use, are strictly for Lessee's own use and do not constitute a commercial enterprise. Any other agriculture use must be approved by the Chairman."

Said notice, accepted by the Lessee on March 11, 2016, offered the Lessee a sixty-day cure period to correct the default. This cure period expired on May 11, 2016. As of June 29, 2016, this breach has not been cured and the current status of the following lease compliance items is as follows:

Rent: The Lessee has not submitted the current quarterly rent charge of \$657.50, which was due on May 24, 2016.

Insurance: The Lessee has not posted the required liability & fire insurance policy;

Liability Insurance: expired 3/31/2016
Fire Insurance: expired 4/10/2016

Performance Bond: The Lessee has posted only \$5,040.00 of the \$5,260.00 performance bond required. This bond is in the form of a CD. A difference of \$220.00 is still owed by the Lessee.

Conservation Plan: As of June 29, 2016, the Lessee has NOT submitted a conservation plan, but has shown effort in working with NRCS.¹ On January 8,

¹ The requirement of a conservation plan was not part of the original Lease. It was imposed at BLNR meeting of May 15, 1998, under agenda item D-24 due to an NOD that was issued for

2007, our office received a memo from Waiakea Soil and Water Conservation District, stating that NRCS is working on updating the conservation plan for Miyashiro Poultry & Hog Farm, Inc.

OTHER:

On November 24, 1997, an NOD was received by the Lessee for the farm operation being out of business, abandoned structures, overgrown grass, and an unauthorized underground storage tank (UST) used for fuel. The Lessee failed to cure the defaults within the sixty (60) day cure period, which led to a request for Forfeiture of GL S-3954 that was to be presented to the BLNR at its meeting of March 13, 1998. Then, by letter dated December 15, 1997, in support of the Lessee, Councilman Arakaki, requested extending the remedy period to six (6) months, as the Lessee needs additional time and resource to cure the defaults. Consequently, the Chairperson of the BLNR accommodated the request and ordered for it to be withdrawn, provided that, within forty five (45) days, the Lessee draw up a written plan and timetable of the various tasks that needs to be done to restart their farm operation, steps necessary to remove the underground fuel tank, and expenditure figures. By letter dated March 13, 1998, Mr. Reynold Miyashiro, son of Lessee, submitted a written plan.

On May 15, 1998, the Board of Land and Natural Resources (BLNR) approved and amended the Forfeiture of General Lease No. S-3954, assigned to Miyashiro Poultry & Hog Farm, Inc. with the following recommendations:

- A. Re-impose the Performance Bond requirement. Delivery to be in thirty (30) days from Land Board meeting.
- B. Impose a Good Husbandry and Conservation Program condition as found in State agriculture leases. The Lessee shall at all times practice good husbandry and carry out a program of conservation in cooperation with the appropriate Soil and Water Conservation District, with which district the Lessee shall maintain cooperative status. The conservation program shall be in accordance with a conservation plan which shall be submitted to the Chairperson for acceptance within six (6) months. The conservation plan which shall include, but not limited to, those practices as land clearing, cropping system, irrigation system, drainage, noxious weed control and others needed to protect the land against deterioration and to prevent environmental degradation; provided, however, that this requirement may be waived for leases with little or no apparent conservation problems when verified by the appropriate Soil and Water Conservation District. In the event the activities of the Lessee in this regard shall be found to be unsatisfactory to the

improper use of the property based on observation during a site inspection.

Chairperson, the Chairperson shall notify the Lessee and the Lessee shall be required, within sixty (60) days of the notice, to cure the fault and submit proof satisfactory to the Chairperson.

- C. Require a Level One (1) Hazardous Waste Evaluation, conduct a complete abatement, disposal, and removal of the farm tank or underground storage tank, satisfactory to the standards required by the Federal Environmental Protection Agency. Compliance should be not later than December 31, 1998.
- D. That the lessee re-establishes a commercial hog operation on the property by the end of the year.

On October 30, 1998, another request for Forfeiture of GL S-3954 was presented to the BLNR for failure to provide proof of current liability insurance and back rent. The request was withdrawn due to the Lessee providing current liability insurance certificate and paid back rent.

On December 11, 1998, the UST was removed by the Lessee and an Underground Storage Tank Closure Report was prepared in January 1999 by Walker Consultants, Ltd. No leaks were reported in association with the UST's operation or closure. Also, no further action was recommended by Walker Consultants, Ltd.

Also prepared in January 1999, was a Phase I Environmental Assessment done by M&E Pacific, Inc., which concluded:

- No significant impact to the subject property was observed, recorded or documented.
- Historical operations which potentially involved the handling of hydrocarbons, hazardous materials and hazardous wastes include automobile, truck and heavy equipment repair and maintenance.
- Few potential environmental concerns, including abandoned vehicles and heavy equipment, motor oil drums, and paint/primer cans, and vehicle batteries stored on site.
- One diesel storage tank (500 gal) is located on the subject property with no leaks or surface stains.
- No landfills or hazardous waste disposal sites are known to exist within the vicinity.
- No HEER² action or CERCLIS³ sites were recorded on or in the immediate vicinity of the subject property.

² Department of Health Hazard Evaluation and Emergency Response

³ Environmental Protection Agency Region IX Comprehensive Environmental Response, Compensation, and Liability Information System


In 2007, a letter from the Soil and Water Conservation District confirmed that the Lessee is working with NRCS to update their conservation plan. As of June 29, 2016, our files show no evidence of an updated conservation plan being completed or submitted.

In the past 10 years, the Lessee has had fourteen (14) defaults for quarterly rent, four (4) defaults for liability insurance, and once for fire insurance. The Lessee has also been defaulted twice for not having a conservation plan approved by the NRCS. They were also defaulted twice for not submitting the full amount of the required performance bond. All defaults were cured within the sixty (60) day cure period, except for the ones described above.

RECOMMENDATION: That the Board:


1. Authorize the cancellation of General Lease No. S-3954 in the manner specified by law;
2. Authorize the retention of all sums heretofore paid or pledged under General Lease No. S-3954 to be applied to any past due amounts;
3. Terminate the lease and all rights of Lessee and all obligations of the Lessor effective as of July 22, 2016, provided that any and all obligations of the Lessee which have accrued up to said effective date or which are stated in the lease to survive termination shall endure past such termination date until duly fulfilled, and further provided that Lessor reserves all other rights and claims allowed by law; and
4. Authorize the Department of the Attorney General, the Department of Land and Natural Resources, or their agents to collect all monies due the State of Hawaii under General Lease No. S-3954 and to pursue all other rights and remedies as appropriate.

Respectfully Submitted,




Dan K. Gushiken
Land Agent

APPROVED FOR SUBMITTAL:



Suzanne D. Case, Chairperson



GL S-3954 Consent to Assignment

Miyashiro Poultry & Hog Farm, Inc. (Assignor) – Marvin Miyashiro (Assignee)

2-4-49 3RD DIV

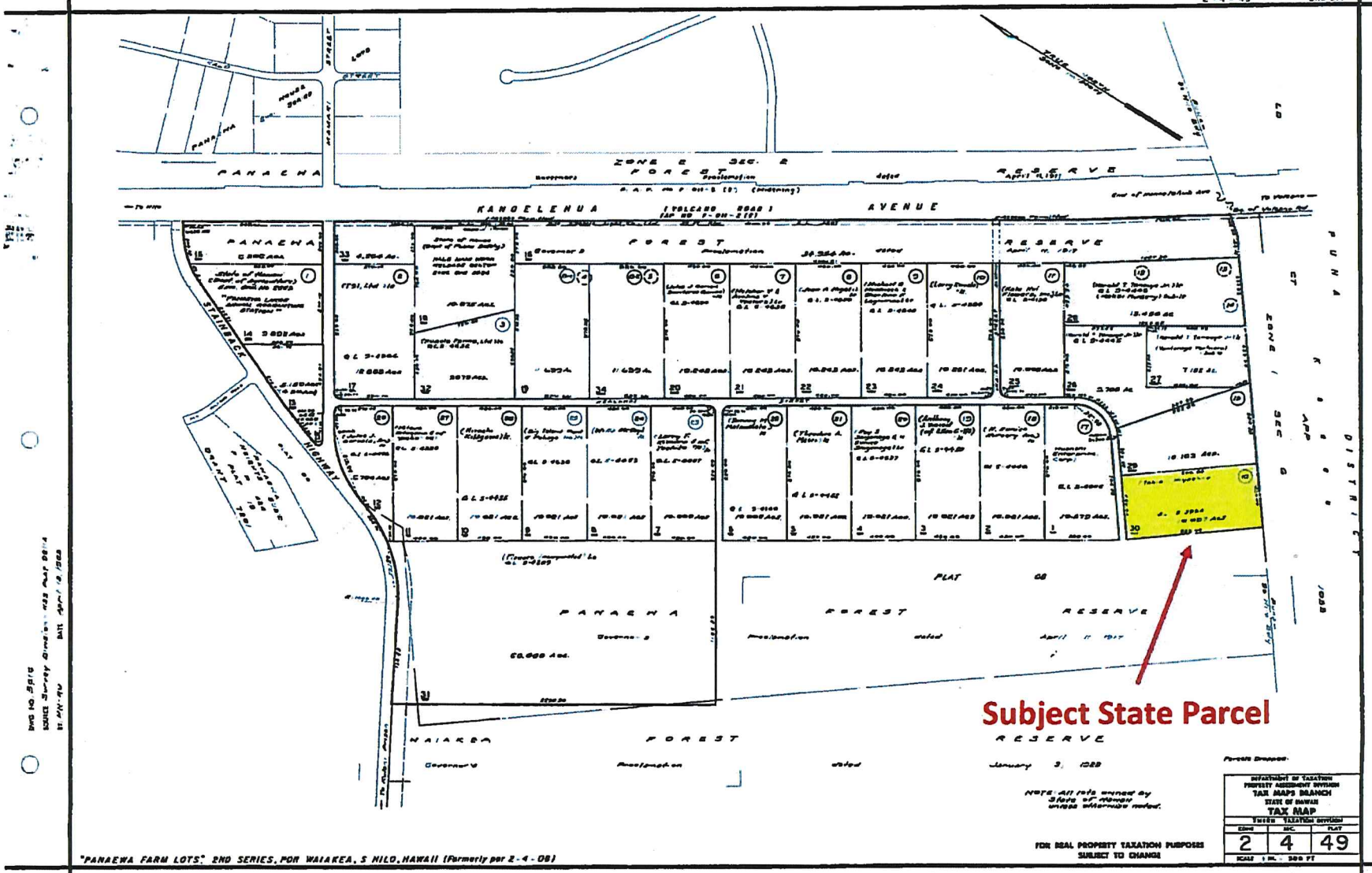


EXHIBIT A

**Forfeiture of General Lease No. S-3954
(Miyashiro Poultry & Hog Farm, Inc.)
EXHIBIT B
(PHOTOS)**



Aerial View of Miyashiro Poultry & Hog Farm, Inc.

Forfeiture of General Lease No. S-3954
(Miyashiro Poultry & Hog Farm, Inc.)
EXHIBIT B
(PHOTOS)



Conditions of the piggery

**Forfeiture of General Lease No. S-3954
(Miyashiro Poultry & Hog Farm, Inc.)
EXHIBIT B
(PHOTOS)**



100 ft. wide hole with various types of waste (piggery in background)



Bob's Fencing Baseyard

**Forfeiture of General Lease No. S-3954
(Miyashiro Poultry & Hog Farm, Inc.)
EXHIBIT B
(PHOTOS)**



Evidence of automobile junkyard and truck storage in background

**Forfeiture of General Lease No. S-3954
(Miyashiro Poultry & Hog Farm, Inc.)
EXHIBIT B
(PHOTOS)**



"Showbird" breeding operation & Cockfighting pit in background

**Forfeiture of General Lease No. S-3954
(Miyashiro Poultry & Hog Farm, Inc.)
EXHIBIT B
(PHOTOS)**



Three residential dwellings

**Forfeiture of General Lease No. S-3954
(Miyashiro Poultry & Hog Farm, Inc.)
EXHIBIT B
(PHOTOS)**



Significant rust and compromised structural integrity of improvements